REPORT TO THE HONOURABLE CLAUDE RICHMOND
MINISTER OF FORESTS
RECOMMENDATIONS OF THE CONTRACTOR
CLAUSE REGULATION AND TIMBER
HARVESTING CONTRACT REGULATION

KENT G. WOODRUFF

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1. INTRODUCTION.

The Minister of Forests has contracted an independent consultant to review, and to make appropriate recommmendations concerning the Contractor Clause Regulation and the Timber Harvesting Contract Regulation.

(A copy of the Terms of Reference is appended as A-1)

During the course of public meetings and through written submission, arguments were presented by certain individuals and companies working with the Forest Industry. The general positions of Contractors and of Licensees are summarized below.

2. SUMMARY.

2.1 Contractors' Position.

2.1.1 Contractor Clause Regulation.

Contractors expressed the need for the Contractor Clause Regulation to be extended to include Forest Licenses for the following reasons:

i) Contractors and Sub-Contractors both want job security with five or two year replaceable contracts. They raise the argument that the licensees have security of tenure with fifteen year term Forest Licenses replaceable every five years.

ii) Contractors pointed out that equipment is expensive and that financing of their business would be easier and less costly if they had secure replaceable contracts.

iii) Contractors indicated that written contracts with a secure term and right of replacement would allow them to sell or assign their contracts if for health reasons, age or finances they so decided. Presently, in many areas, contractors simply sell

their equipment at an auction thereby losing most or all of their equity.

iv) Contractors suggested that the Contractor Clause Regulation should be firmly enforced.

2.1.2 Timber Harvesting Contract Regulation.

a) Contractors suggested that all contracts should be replaceable.

b) Contractors suggested that failure to comply with this regulation should be made an offence under the Forest Act.

c) Contractors suggested that there should be an inexpensive and quick method to resolve disputes.

d) Sub-Contractors suggested that sub-contracts should be subject to this regulation and that they should have a term of two years and be replaceable. Contractors had mixed views on this issue.

2.2 Licensees' Position.

2.2.1 Contractor Clause Regulation.

a) Licensees do not want to have the Contractor Clause Regulation extended to Forest Licenses.

b) Licensees suggested that compliance with the existing regulation is expensive and time consuming and that the Forest Industry may be already over regulated.

c) Licensees suggested that their tenure was not as secure as Contractors had indicated for the following reasons:

i) The annual allowable cut of replaceable licenses was recently reduced by five percent for the Small Business Enterprise Program.

ii) Some annual allowable cuts are threatened by land claims, and by environmental demands.

iii) Licensees are often required by the Ministry of Forests to move from one part of a Timber Supply Area to another in response to natural calamities such as insect and fire damage. These moves are often costly to industry.

d) Licensees suggested that they must have fexibility to respond to environmental demands and to market and technological circumstances. These may require their direct involvement in trying out new equipment and/or new harvesting methods.

e) Licensees suggested that because of the dramatic increase in the stumpage rates in 1987, fixed long term contracts, unless the price could be varied, could mean economic disaster to some mills.

2.2.2 Timber Harvesting Contract Regulation.

a) Licensees suggested that there should be a quick and inexpensive method to resolve disputes.

b) Licensees suggested that if this regulation is extended to sub-contractors enforcement should not be the Licensees' responsibility.

3. HISTORY

3.1 History of the Contractor Clause Regulation.

The Government of British Columbia first became involved in this field when Tree Farm Licenses came into existence in the late 1940's and 50's. Tree Farm Licenses (then called Forest Management Licenses) were large area based tenures. The public perception was that these large area based tenures would displace small market loggers who formerly bid and relied upon Timber Sales. To protect the status quo, the Province of British Columbia passed legislation requiring Tree Farm License holders to contract a portion of their harvest to

independent loggers. The fraction was initially 30% which was later increased to 50%.

In 1979, replaceable Forest Licenses were introduced. The Forest Act then and now, states that a Forest License may make provision for timber to be harvested by persons under contract with its holder (presently section 12 (h)). This reference is set out in Forest Licenses, which state that "the licensor in a notice to the licensee may require that a portion of the volume of timber harvested under this license during any calendar year be harvested by persons under contract with the licensee." To date, the Ministry of Forests has not required a portion of the volume of timber harvested under Forest Licenses to be harvested by others.

The Contractor Clause Regulation provides for a method of checking compliance and makes a distinction between full contracts and phase contracts. Full contracts, by regulation, must have a term of five years and after three years be replaced for a further five year term. Phase contracts must have a two year term and be replaced each year. Also, the present Contractor Clause Regulation requires that a person under a full contract with a Licensee entering into a sub-contract must as well comply with certain requirements and offer "to the sub-contractor a contract to replace the existing contract on the first anniversary date for a term or at least two years or such lesser term as is necessary to complete the phase or phases and that is subject to the person under contract satisfactory performing his obligation."

The regulation provides for a distinction between coastal and interior Tree Farm Licenses. For the Coast, defined as the area west of the Cascade Mountains, the requirement is that at least 70% of the volume that is required to be harvested by someone under contract is to be harvested under full contracts and the remainder is to be harvested under phase contracts. In the Interior, the 50% may be harvested under either full contracts or under phase contracts or a mix of the two; however, at least 70% of the volume that is required to be harvested under contract must have a five year term and be

replaceable after three years for subsequent five year periods.

The requirements of this Regulation do not apply to Forest Licenses, Timber Sale Licenses, Timber Licenses or to private forest land.

The Contractor Clause Legislation and Regulation are peculiar to British Columbia at least in Northwest America.

(A copy of the Contractor Clause Regulation is appended as Appendix A-3.1)

3.2 History of the Timber Harvesting Contract Regulation

The Timber Harvesting Contract Regulation was introduced in 1990 following the recommendations of the Select Standing Committee on Forests and Lands who observed, amongst other things, that there was a disparity in treatment among contractors which had led to requests for a standard form of Timber Harvesting Contract to be prescribed by the Government. The Committee did not consider that a standard form of contract would be in the public interest, but recommended

(1) "that all timber harvesting contracts between holders of Tree Farm Licenses and Forest Licenses and their contractors should be in writing,

(2) that significant phase sub-contracts of the main contracts should be in writing and include the same basic elements."

The second recommendation was not included in Bill 86 an amendment to the Forest Act, nor was it included in the Timber Harvesting Contract Regulation, B.C. Regulation 6/90.

The Select Standing Committee also found that "during the course of the contracts, disagreements occasionally arose between licensees and their contractors with regard to such things as compensation rates to be paid to contractors, the selection of operating areas, production curtailments and additional work to be undertaken by the contractor. Timber

Harvesting Contracts did not typically provide a mechanism for the systematic resolution of these disputes. Breakdown of negotiations can result in termination of the agreements, or unilateral imposition of new terms by a licensee or contractor." The Select Standing Committee further found that the negotiating power of most licensees "far outweighs that of their contractors," and recommended that "all Timber Harvesting Contracts entered into between holders of Tree Farm Licenses and Forest Licenses, and the contractors and significant phase contractors, should include an arbitration provision to be used to resolve all disputes between the parties," and that "licensees and contractors should be free to agree on an arbitration procedure acceptable to them. However, if they are unable to agree, disputes should be resolved by arbitration under the Commercial Arbitration Act." These recommendations were embodied within Bill 86 and Regulation 6/90.

Recently, Bill 48, provided for an amendment to s. 158 of the Forest Act extending the requirements of the Timber Harvesting Contract Regulation to include sub-contracts.

(Copies of the Timber Harvesting Contract Regulation and the applicable portion of Bill 48 are appended as A 3.2)

4. REVIEW.

4.1 PROCEDURE.

4.1.1 Public Meeting and Information Gathering.

In order to determine the current issues, in consultation with the Ministry, it was decided to use the format of advertised public meetings rather than formal public hearings in order to allow more flexibility and to reach a greater number of individuals and companies working in the forest industry. (Appendix A-4.1.1a sets out the location of the meetings and Appendix A-4.1.1b sets out the details of the advertisments.)

4.1.2 Submissions.

Both written submissions and oral submissions were received from licensees, associations of licensees, contractors, association of contractors, sub-contractors and association of sub-contractors and independent consultants. A brief summary of the positions of licensees, contractors and sub-contractors and silviculture contractors is provided below.

(A schedule of the written submissions is appended hereto as Appendix A - 4.1.2)

4.1.3 Licensees' General Position.

a) With a few exceptions, licensees felt that their industry was already over-regulated.

b) Licensees rejected the idea that their tenure was secure (25 year TFL and 15 year Forest Licenses, both replaceable); in that, their tenure was interfered with in the following manner:

i) the Government unilaterally reduced the annual allowable cut on replaceable licensees to provide timber for the Small Business Forest Enterprise Program;

ii) the Government dramatically increased stumpage rates in 1987;

iii) the Government has introduced new rules with respect to soil degradation;

iv) the public's concern over environmental issues and the general opposition to clear cutting could result in further decreases in allowable annual cuts;

v) licensees are also concerned about native land claims;

vi) the Ministry directs licensees to harvest forests damaged by natural calamities such as insect damage, fire, and blow downs.

c) Licensees wish to maintain flexibility in managing the forest, for which the government made them responsible.

The consensus of licensees was to oppose any extension of either regulation.

4.1.4 Contractors' General Position.

Generally, the contractors, whether they be full or phase contractors, desired more security for their livelihood. In many instances, they have been working on contracts that are season to season. In some instances, contractors have longer contracts either by reason of working on a Tree Farm Licence or by a licensee's particular policy.

(a) The contractors request security of tenure for the following reasons:

i) The high cost of equipment;

ii) Proper financial planning;

iii) Assignability of contractual rights.

b) The contractors argued for quick, inexpensive resolution of contract disputes.

c) With a few exceptions, full contractors agreed that their sub-contractors should have written contracts with the same rights as the full contractors.

4.1.5 Sub-Contractors'Position.

Phase contractors, such as truck drivers, were especially concerned about their tenure and many submissions were received wherein trucking contractors indicated that they

lost their position on the seniority lists because:

i) a licensee perferred one type of truck over another;

ii) A full contractor or the licensee bought truck(s) and thereby displaced a trucker(s).

4.1.6 Silviculture Contractors' Position.

Most silviculture contracts are presently in writing but silviculture contractors desire longer terms.

5. SUBMISSIONS.

There were 30 written submissions presented. There were 46 oral presentations that were not accompanied by written submissions. There were 12 oral submissions presented to the consultant outside the public meeting process.

The Licensee Organizations making submissions held 80% of the Tree Farm Licenses in the Province, 70% of all Forest Licenses and approximately 70% of the Timber Sale Licenses.

The four major licensee associations made written submissions which were presented at public meetings. Five major contractor associations made written and oral submissions. As well, written and oral submissions were received from sub-contractors (phase), truckers, Independent Consultants and phase contractors.

6. OBSERVATIONS

As a general observation, it was clear that there was insufficient meaningful discourse between many of the licensees and their contractors. Some of the hearings served a useful purpose in getting the sides together to discuss important issues, including their lack of communication. The

requirement under the Timber Harvesting Contract Regulation to have written contracts has now forced many contractors and their associations to meet and deal with the problems. In many regions, the contractor associations and the licensees have good working relationships and there were no reported difficulties. In fact, many licensees took a personal interest in their contractors and assisted them with respect to financing of new equipment, equipment purchases and logging practices.

The contractors expressed a desire to have access to the Ministry's appraisal estimates, and to use them as the basis for contract negotiations. Ministry people expressed their strongly held views that Ministry's estimates are based on broad cost information and that their estimates reflect a conceptual "average efficient operation," and that if these estimates were used as a basis of contract logging prices for specific stands, they would create far more problems than they would resolve.

The Consultant found that there was a reluctance on the part of some Contractors to join Contractor Associations.

The Consultant found that in some areas there was simply no compromise between the positions of the Licensees and that of the Contractors.

The Consultant found that there was some reluctance on the part of Contractors to make submissions assuming that the Woods Managers of the Licensees would be present, fearing retaliation. This was also observed by the Select Standing Committee in some regions. This lack of communication and trust between Contractors and Licensees was by far the Consultant's primary observation and concern.

The Consultant found that harvesting operations East of the Cascade Mountains were still contracted out in the range of 90 to 95% to Contractors rather than harvested by Licensee company operations.

The Consultant found that in some regions there existed a lack of understanding by both Licensees and Contractors, as to the dispute resolution provisions in the Timber Harvesting Contract Regulation. Many Contractors and Licensees felt that there was a necessity for arbitration but none had considered mediation as a helpful first step in dispute resolution. The Contractors were of the opinion that even if they were successful in an arbitration, the Licensees would retaliate by not renewing their Contract. Both Licensees and Contractors were concerned about the time and cost of arbitration.

In all regions, it appeared that tree planting was done under contract, and the balance of silviculture work was either completed by licensees or under contracts. These contracts in most instances were written, and were pursuant to a request to tender. Individuals who made representations with respect to planting and silviculture contracts advocated a stewardship type of arrangement with longer terms, but generally, they were not experiencing problems like the Loggers are experiencing.

Contractor associations and contractors requested that failing to comply with either regulation be made an offence under the Forest Act.

Contractor associations requested that the province set up a board to hear arbitrations, under the Timber Harvesting Contract Regulation. They also requested that arbitrations be held quickly and in an inexpensive manner.

The Licensees' first preference is for no regulation; their second preference is to leave the Timber Harvesting Regulation as it is; but some reluctantly agreed that if there must be a change that the change should provide for timely and inexpensive methods of resolving disputes.

7. CONCLUSIONS.

The Consultant reached the same conclusion as the Select Standing Committee, namely that there was still "disagreements

occasionally arising between licensees and the contractors, and occasionally a breakdown in negotiations resulting in the termination of agreements and/or by the unilateral imposition of new terms by a licensee or a contractor." The Independent Consultant concluded that the lack of harmony between licensees and contractors, contractors and sub-contractors and truckers, was caused by the following:

1. The fact that the negotiating power of most licensees outweighs that of the contractors;

2. The fact that the negotiating power of most contractors outweighs that of the sub-contractors and/or truckers.

3. The increased stumpage since October, 1987 and the method of calculation creates a situation where in a falling market, licensees try to cut back on their expenses, which in some cases causes them to re-negotiate established rates with their contractors, which the contractors try to pass down to the sub-contractors;

4. The lack of communication in some cases between licensees and contractors and between contractors and sub-contractors;

5. The misunderstanding of the dispute resolution provisions of the Timber Harvesting Contract Regulation;

6. The lack of a quick, efficient, inexpensive method to resolve disputes first through mediation and then if necessary through arbitration;

7. The lack of compliance by some licensees with the regulations under the Contractor Clause Regulation; ie., the requirement to have five year contracts with full contractors;

8. The absence of an offence section in the Forest Act for noncompliance with the Timber Harvesting Regulation.

Generally, the Consultant found that the lack of harmony was more prevalent in the interior than on the coast of the Province. It is for this reason that the Consultant concluded that no change should be made to the Coast-Interior distinction under the Contract Clause Regulation. It is also for this reason that the consultant concluded that no change should be made to the 50% contracting provision or the current mix of full and phase contracts as it applies to contracts in Tree Farm Licenses in the Coastal area.

The Independent Consultant has further concluded that the extension of the Contractor Clause Regulation to Forest Licenses and/or other forms of forest tenures would not solve the problems. The problems do not stem from whether or not the contractor or sub-contractor is working within a Tree Farm License or a Forest License but rather they stem from disagreements over specific conditions of contracts already in place or contracts subject to replacement. Most disagreements between contractors and licensees, and contractors and sub-contractors arise when one or the other party wishes to change a condition, in most cases the contract rate. If the contract is for a short duration, as many are, ie. cut block, season to season or year to year, then the party with the stronger bargaining position can simply hold out rather than negotiate a new renewal rate in good faith. It is for this reason that the consultant concluded that all Harvesting Contracts should be in writing and that all be automatically replaceable unless they are for a specific time limited purpose or there is cause for no replacement, such as insufficient performance, decreases in the licensees' allowable annual cut, etc.

Since determination for cause may become very litigious, the Consultant has concluded that the dispute resolution should be a two-phase process. First the dispute should be referred to a one person mediator for resolution. If the dispute is not resolved through mediation, or if both parties wish to omit the mediation process, the dispute should be referred to a three person arbitration board for a binding decision. The cost of mediation and/or arbitration must be neutral to the Government; more specifically, in the first instance the

person who requests mediation and/or arbitration should be required to pay the estimated costs of his request. At the conclusion of the mediation or arbitration the cost should be disposed of as follows:

1. If the decision reflects fully the position of one party the full costs should be borne by the other party;

2. If the decision reflects a compromise between the two positions the cost should be shared 50 - 50 between the parties unless the mediator or board of arbitration decides otherwise.

It is the Consultant's conclusion that non-compliance with the Timber Harvesting Contract Regulation should be an offence under the Forest Act. This would solve the dilemma of enforcement against individuals who have no privity of contract with the Ministry, (ie. sub-contractors).

It is the Consultant's conclusion, that a requirement that all harvesting contracts be in writing and be replaceable would put the onus back on the Forest Industry to police any abuses and restore harmony. Presently, contracts are replaced through negotiations where performance is not an issue. With the recommended amendments, negotiations would still take place, mediation would follow, and if that did not lead to a resolution of the issues they would then be referred to binding arbitration.

CONCLUSIONS ON OTHER ALTERNATIVES.

With respect to contracts other than harvesting, it is the Consultant's conclusion that the Timber Harvesting Contract Regulation should not be extended to non-harvesting contracts for two reasons:

1. In many instances, these are already covered by tendered contracts;

2. Except in the field of silviculture, there were no submissions made to the Consultant with respect to any concerns. With respect to silviculture, since most aspects of silviculture are on a tender basis, it is the Consultant's conclusion that silviculture not be included within either regulation at this time.

It is the Consultant's conclusion that there is no need for an offence section in the Contractor Clause Regulation, for there is presently financial penalties for non-compliance plus privity of contract at least between licensees and the Ministry.

The Consultant concluded that the alternative of imposing the Contractor Clause Regulation on Forest Licenses, would not alleviate the problem and it would be difficult to put into play with the different contracting mixes.

The Forest Industry should have flexibility to be able to respond to problems that lay ahead such as:

(a) Native Land Claims;

(b) Environmental Concerns - clear cutting, special ecological area, waste burning;

(c) Competition.

The Forest Industry is undergoing drastic changes, and the Province in managing this great resource must strive to reduce contractual strife. The Province must also ensure that its involvement does not unduly hamper the competitive edge that the British Columbia Forest Industry enjoys, nor close the doors to new entrepreneurs who wish to become involved in the Industry.

Further, government intervention in the contractual aspects of Timber Harvesting cannot be recommended lightly, but there still appears to be a need, and it is hoped that the following recommendations will assist the Forest Industry and their

contractors by providing all parties to Harvesting Contracts with an inexpensive, quick method to resolve contractual disputes.

RECOMMENDATIONS

8.1 CONTRACTOR CLAUSE REGULATION

8.1.1 The Contractor Clause Regulation should not be extended to forest licenses and/or other licenses -

8.1.2 The minimum contracting out requirement of 50% on Tree Farm licenses should not be changed -

8.1.3 The 70% - 30% contracting requirement mix should not be changed -

8.1.4 The Coastal/Interior distinction under the Contractor Clause Regulation should not be changed

8.2 TIMBER HARVESTING CONTRACT REGULATION

8.2.1 The Timber Harvesting Contract Regulation should apply to all harvesting phases under any harvesting license.

8.2.2 The Timber Harvesting Contract Regulation should not be extended to cover works in addition to harvesting such as silviculture -

8.2.3 The Timber Harvesting Contract Regulation should be extended to sub-contracts.

8.2.4 Section 159 of the Forest Act should be amended to make it an offence for failing to comply with the Timber Harvesting Contract Regulation.

8.2.5 a) The Timber Harvesting Contract Regulation should be amended to provide that all Harvesting Contracts be replaceable unless satisfactory cause is shown for non-replacement (such as insufficient performance, decreases in the licensees' allowable annual cut, etc).

b) The Timber Harvesting Contract Regulation should be amended to provide that a Timber Harvesting Contract Arbitration Board to deal with disputes arising out of a Harvesting Contract. It is suggested that the arbitration board under the Timber Harvesting Contract Regulation be set up such that there are three teams, one for the Northern Interior, one for the Southern Interior and one for the Coast (Vancouver and Rupert Regions). All arbitration should be heard by a three man board consisting of a Chairman, (preferably a lawyer) an experienced Contractor; and a Licensee Representative. Mediators would be selected from this arbitration board.

c) The Timber Harversting Contract Regulation should be amended to provide for the efficient timely resolution of disputes. The Consultant recommends the following procedures:

i) When a party to a harvesting contract contacted either the district or region office of the Ministry of Forests, that office would contact the Timber Harvesting Contract Arbitration Board who would immediately appoint a Mediator.

ii) The Mediator so appointed would then contact the person requesting the mediation and make the appropriate financial and time arrangements.

iii) The Mediator within 10 days, unless the parties agreed to a shorter period or agreed to send the matter directly to arbitration, would mediate the dispute.

iv) Should during the period of mediation, either the Mediator or the parties agree that the

matter can not be mediated, it would then be referred directly to a board of arbitration.

v) At the end of 10 days if the Mediator had not successfully resolved the dispute, he would refer the matter to an arbitration board.

vi) The Mediator appointed would have the responsibility of making the financial arrangements for both the mediation and the arbitration such that the costs of both mediation and arbitration remained neutral to the Government.

vii) The arbitration board meet within 7 days from the date of their appointment unless the parties agree to extend the time.

viii) The arbitration board will render their binding decision in writing within 7 days of the day of final deliberation unless the parties agreed to abridge the time.

2. TERMS OF REFERENCE

As Independent Consultant to the Minister of Forests, the contractor shall, within 90 days of signing, provide the Minister with:

a) Observations, and
B) Recommendations

regarding possible amendments to the Timber Harvesting Contract Regulation and the Contractor Clause Regulation.

The above shall be in the form of four copies of a written report, based on the Contractor's research, which shall include six public meetings, to be suitably advertised by the Contractor. The Contractor shall examine the purposes and effectiveness of the regulations regarding sound business relations between members of the forest industry, giving consideration to forest tenures, levels of regulation, types of work and any related aspects the Contractor deems worthy of review.

Without limiting the generality of the contract, the contractor is to address the following issues.

1. (a) Should the Contractor Clause Regulation be extended to Forest Licenses, and other licenses:

   (b) If yes to 1(a) above, what should be the minimum contracting requirement? (Should it be the same as it is for Tree Farm Licenses currently, or the level or traditional contracting, or some other requirement?)

   (c) If the contracting requirement is to be extended to Forest Licenses and/or other licenses, should the minimum contracting requirement be the same for all licenses?

2. (a) Should the Harvesting Contract Regulation be extended to other licenses?

   (b) Should the Harvesting Contract Regulation be extended to cover works in addition to harvesting?

B.C. Reg. 358/85
O.C. 2060/85

Deposited November 8, 1985

Forest Act

CONTRACTOR CLAUSE REGULATION

(includes amendments up to B.C. Reg. 38/86)

Interpretation

1. In this regulation

"coastal area" means the area of the Province west of the Cascade Mountains;

"contractor clause" means a provision in a licence requiring timber to be harvested by a person under contract with the licensee;

"full contract" means a contract

(a) in which a person under contract agrees with a licensee to carry out all phases of a timber harvesting operation or a fewer number of phases where these phases constitute a substantial proportion of a timber harvesting operation,

(b) that has a term of at least 5 years that is subject to the person under contract satisfactorily performing his obligations,

(c) that provides that the licensee will offer to the person under contract a contract to replace the existing contract on its third anniversary for a term of at least 5 years that is subject to the person under contract satisfactorily performing his obligations, and

(d) that requires the person under contract before he enters into any subcontract of a phase of the timber harvesting operation, other than a subcontract to meet a temporary need of the operation, to offer to the intended subcontractor, subject to him meeting the obligations to be imposed on him by the subcontract,

(i) where the contract has at least 2 years left to run, either a term under the subcontract of at least 2 years or the opportunity to choose between a term of at least 2 years and a lesser term, or

(ii) where the contract has less than 2 years left to run, either a term under the subcontract equal to the time left to run under the contract or the opportunity to choose between that term and a lesser term,

and includes a full contract, as defined in B.C. Reg. 310/79, that was entered into before the day that regulation was repealed;

"interior area" means the area of the Province east of the Cascade Mountains;

"licence" means a tree farm licence;

"licensee" means the holder of a licence;

"logging access road" means a road referred to in section 88 (2) of the *Forest Act;*

"person under contract" means a person who has contracted with a licensee to harvest timber under a full contract or phase contract, but does not include

(a) another licensee,

(b) a corporation that has more than 10% of its outstanding voting shares beneficially owned, directly or indirectly
  (i) by the licensee, or
  (ii) by a person who is the beneficial owner of more than 10% of the outstanding voting shares of the corporate licensee, or
(c) a person who is the beneficial owner, directly or indirectly, of more than 10% of the outstanding voting shares of the corporate licensee;

"phase contract" means a contract, other than a full contract,
(a) in which a person under contract agrees with the licensee to carry out one or more phases of a timber harvesting operation,
(b) that has a term of at least 2 years or such lesser term as is necessary to complete the phase or phases and is subject to the person under contract satisfactorily performing his obligations, and
(c) that provides that the licensee will offer to the person under contract a contract to replace the existing contract on the first anniversary for a term of at least 2 years or such lesser term as is necessary to complete the phase or phases and that is subject to the person under contract satisfactorily performing his obligations

and includes a phase contract, as defined in B.C. Reg. 310/79, that was entered into before the day that regulation was repealed;

"phases of a timber harvesting operation" means felling, bucking, yarding, skidding and decking, loading, hauling, unloading, booming, non mill dryland sorting, logging road construction, logging road maintenance, logging access road construction and any other phases or combinations of them that are part of a timber harvesting operation under a licence, but does not include catering, cruising, forest engineering, reforestation, equipment rental, equipment maintenance and overhead;

"substantial proportion of a timber harvesting operation" means a proportion in which the total costs of the phases as estimated in the stumpage rate determination plus any credit to stumpage for logging access road construction handled under the contract constitute at least 65% of the total costs of all phases as so estimated of a timber harvesting operation within the area covered by the contract;

"volume of timber harvested" means the total volume of timber that is billed to a licensee under the licence during the calendar year.

[am. B.C. Reg. 38/86, s. 1.]

Compliance with contractor clause

2. Compliance with the contractor clause shall be assessed for each calendar year in accordance with this regulation.

Coastal area

3. Where more than half of the licence area is located within the coastal area, a licensee is deemed to comply with the contractor clause when
(a) at least 70% of the volume of timber that is required to be harvested under the licence by a person under contract is harvested under full contracts, and

(b) the remainder that is required to be harvested under the licence by a person under contract is harvested under phase contracts.

Interior area

4. Where more than half of the licence area is located within the interior area, a licensee is deemed to comply with a contractor clause when

(a) the volume of timber that is required to be harvested under the licence by a person under contract is so harvested under any combination of full contracts and phase contracts,

(b) at least 70% of the volume of timber that is required to be harvested under the licence by a person under contract is so harvested under full contracts or under phase contracts that, where the phase contracts were entered into after B.C. Reg. 310/79 was repealed, fulfill paragraphs (b) and (c) of the definition of full contract in section 1, and

(c) the remaining volume of timber that is required to be harvested by a person under contract is harvested under phase contracts.

[am. B.C. Reg. 38/86, s. 2.]

Volume attributable to full contracts

5. For assessment of compliance

(a) a full contract includes all phases in respect of the timber to which it applies,

(b) no timber that is included in the calculation of the volume harvested under a full contract shall be included in the calculation of the volume of timber handled under a phase contract, and

(c) the volume of timber harvested under full contract during a calendar year is the attributable volume.

Volume attributable to phase contracts

6. For assessment of compliance

(a) the volume of timber deemed to be harvested under a phase contract, other than a phase contract for logging road construction, logging road maintenance and logging access road construction, is calculated by applying the formula

$$\frac{A}{B} \times C$$

where

A is the total cost of the phase as estimated in the stumpage rate determination,

B is the total costs of all the phases of the timber harvesting operation as estimated in the stumpage rate determination, plus all credits to stumpage for logging access road construction, and

C is the volume of timber harvested under the phase contract,

(b) the volume of timber deemed to be harvested under a phase contract for logging road construction, logging road maintenance or logging access road construction is calculated by applying the formula

$$D \times \frac{E}{F}$$

where

D is the volume of timber harvested under the licence,

E is the total cost for the appropriate phase contract in the year of construction or maintenance as the case may be, and

F is the total costs of all the phases of the timber harvesting operation as estimated in the stumpage rate determination, plus all credits to stumpage for logging access road construction, and

(c) the volume of timber harvested under phase contracts during a calendar year is the sum of the volumes as calculated under paragraphs (a) and (b) and is the attributable volume.

Total volume deemed contracted

7. The total volume of timber attributable to contracts is the sum of the volume of timber attributable to full contracts and phase contracts.

Condition on relief

8. The minister shall not relieve a licensee from the provisions of section 28 (i) of the *Forest Act* unless he is satisfied that compliance is not feasible in the circumstances.

[Provisions of the *Forest Act* relevant to the enactment of this regulation: sections 28 (i), (j) and (k) and 158 (1) and (2) (e)]

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Victoria, 1986

B.C. Reg. 6/90
O.C. 84/90

Deposited January 12, 1990

Forest Act

TIMBER HARVESTING CONTRACT REGULATION

Interpretation

1. In this regulation

"contractor" means a person who enters into a timber harvesting contract with a licensee;

"licensee" means a holder of a tree farm licence or forest licence entered into under the *Forest Act*;

"timber harvesting contract" means a contract between a contractor and a licensee

(a) that

(i) will take or is likely to take more than 4 weeks to complete, or

(ii) when taken together with any previous contract between the parties during a calendar year, will take or is likely to take more than 4 weeks, in the aggregate, to complete, and

(b) provides for one or more of the following to be performed by the contractor during a timber harvesting operation:

(i) felling;

(ii) bucking;

(iii) yarding;

(iv) skidding and decking;

(v) loading;

(vi) hauling;

(vii) unloading;

(viii) booming;

(ix) non-mill dryland sorting;

(x) logging road construction;

(xi) logging road maintenance;

(xii) logging access road construction;

(xiii) any other operation directly associated with timber harvesting other than catering, cruising, forest engineering, reforestation, scaling, equipment maintenance or supplying rental equipment.

Written contract

2. (1) All timber harvesting contracts shall be in writing.

(2) This section applies to all timber harvesting contracts that are in effect on the date this section comes into force.

(3) Where a contract referred to in subsection (2) is not in writing, the parties to the contract shall, not more than 90 days after this section comes into force or within such further period as the regional manager may allow, put the contract in writing and comply with section 3.

Provisions for dispute resolution

3. (1) Every timber harvesting contract shall contain

(a) one or more mechanisms agreed to by the licensee and the contractor for the resolution of a dispute between them regarding a term, condition or obligation under the contract, and

(b) a clause that permits the licensee or the contractor to require the dispute to be resolved by arbitration under the *Commercial Arbitration Act* where the dispute is not resolved using provisions referred to in paragraph (a).

(2) Where the contractor and the licensee fail to include a provision referred to in subsection (1) in the timber harvesting contract, the *Commercial Arbitration Act* applies to an unresolved dispute.

(3) This section applies to all timber harvesting contracts that are in effect on the date this section comes into force.

(4) Where a contract referred to in subsection (3) does not contain a provision referred to in subsection (1), the parties shall, not more than 90 days after the date this section comes into force, amend the agreement by including such a provision and, where they fail to do so within that period, subsection (2) applies.

[Provisions of the *Forest Act* relevant to the enactment of this regulation: section 158 (2) (e.1)]

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10. Section 158 is amended

(a) in subsection (2) by adding the following paragraph:

(e.2) provisions that make the requirements referred to in paragraph (e.1) applicable to a subcontract between

(i) a person referred to in paragraph (e.1) (ii), and

(ii) a subcontractor

under which the subcontractor will fulfill some of the requirements of a contract to which paragraph (e.1) applies; , and

(b) by adding the following subsection:

(5) A regulation made under subsection (2) (e.1) or (e.2) may provide that it applies to contracts or subcontracts, as the case may be, that were entered into before the regulation was enacted but have not yet been completed, and the regulation may contain transitional provisions to deal with compliance with the regulation by the parties to those contracts or subcontracts.

Commencement

12. Section 10 (b) shall be deemed to have come into force on January 1, 1990 and is retroactive to the extent necessary to give it effect on and after that date.

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APPENDIX A - 4.1.1a

DETAILS OF ADVERTISMENTS PLACED

CITY	PUBLICATION
Fort St. John	Alaska Highway News
Port Alberni	Alberni Times
Cranbrook	Daily Townsman
Kamloops	Daily News
Kelowna	Daily Courier
Kimberly	Daily Bulletin
Nanaimo	Daily Free Press
Nelson	Daily News
Dawson Creek	Peace River Block News
Pentiction	Herald
Prince George	Citizen
Prince Rupert	Daily News
Trail	Times
Vancouver	Sun
Vernon	Daily News
Victoria	Times Colonist
Williams Lake	Tribune
Burns Lake	District News
Houston	Today
Smithers	Interior News
Terrace	Review/Standard

APPENDIX A - 4.1.1b

LOCATION OF MEETINGS

May 28, 1990 - Kamloops	Dome Motor Inn 555 W. Columbia St.
May 30, 1990 - William Lake	Sacred Heart Parish Hall 455 Pidgeon Avenue
June 1, 1990 - Prince George	Elk's Club 1116 - 6th Avenue
June 5, 1990 - Cranbrook	Inn of the South 803 Cranbrook St.
June 7, 1990 - Vancouver	Pacific Palisades Hotel 1277 Robson Street
June 12, 1990 - Smithers	Aspen Motor Inn 4268 Highway 16

WRITTEN SUBMISSIONS RECEIVED

(a) Licensees

(1) Dunkley Lumber Limited
(2) MacMillan Bloedel Limited
(3) Northwood Pulp and Timber Limited
(4) Tolko Industries Limited
(5) Weyerhauser Canada Limited
(6) Pacific Inland Resources - West Fraser Mills Ltd.
(7) Fletcher Challenge Canada (Northern)
(8) Fletcher Challenge Canada (Coastal)
(9) ATCO Lumber Limited
(10) Canadian Forest Products Limited
(11) Lignum Limited
(12) Stege Logging Limited
(13) Huston Forest Products Co.

(b) Submission on behalf of Licensee Associations

(1) Cariboo Lumber Manufactuers Association
(2) Interior Lumber Manufacturers Association
(3) Council of Forest Industries of British Columbia - Northern Interior Sector
(4) Council of Forest Industries of British Columbia - Coast Sector

(c) Submission on behalf of Contractors Associations

(1) Truck Loggers Association, May 22 and June 8
(2) Interior Logging Association, May 28 and 29
(3) Pacific Reforestation Workers Association
(4) Central Interior Logging Association

(d) Written submissions by Contractors

(1) 11-11 Logging Limited
(2) Inwood Trucking Limited
(3) Nicola Contractors Limited
(4) Timfor Contractors Limited
(5) Critical Site Logging Inc.

(e) Written submissions on behalf of Independent Consultants

(1) Howard Lloyd
(2) Peter Hornick
(3) Tim Hollick-Kenyon